

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. The Respondent had the burden to prove the subject property’s March 1, 2012, assessment was correct. Did the Respondent prove the 2012 assessment was correct?

PROCEDURAL HISTORY

2. The Petitioners initiated their 2012 appeal with the Vigo County Assessor on February 11, 2013. On June 4, 2014, the Vigo County Property Tax Assessment Board of Appeals (PTABOA) issued its final determination denying the Petitioners any relief. On July 11, 2014, the Petitioners timely filed a Petition for Review of Assessment (Form 131) with the Board.
3. On August 11, 2016, the Board’s administrative law judge, Jennifer Bippus (ALJ), held a hearing on the petition. Neither the Board nor the ALJ inspected the subject property.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. The following people were sworn and testified:
For the Petitioners: Randall Gentry.

For the Respondent: Donald Pruett, Harrison Township Assessor,
 Michael West, Vigo County Reassessment Supervisor.
5. The Petitioners did not submit any exhibits.
6. The Respondent submitted the following exhibits:

Respondent Exhibit 1: Residential Neighborhood Valuation Form,
Respondent Exhibit 2: “Information sheet” regarding recent land order,
Respondent Exhibit 3: Land ratio study,
Respondent Exhibit 4: Graph of Harrison Township Neighborhood 118560 land
 assessments.
7. The following additional items are recognized as part of the record:

Board Exhibit A: Form 131 with attachments,
Board Exhibit B: Hearing notice dated June 28, 2016,
Board Exhibit C: Hearing sign-in sheet.

8. The property under appeal is a single family residence located at 81 Avalon Drive in Terre Haute.
9. The PTABOA determined the total assessment is \$231,300 (land \$65,500 and improvements \$165,800).
10. On their Form 131, the Petitioners requested a total assessment of \$209,900 (land \$17,200 and improvements \$192,700).

JURISDICTIONAL FRAMEWORK

11. The Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

OBJECTIONS

12. Mr. Gentry objected to all of the Respondent's exhibits on the grounds they were not provided at least five business days prior to the hearing, as required by 52 IAC 2-7-1(b)(1). Mr. Gentry also objected to Mr. Pruet's testimony regarding "the number of appeals filed and the results of the appeals for the other taxpayers."
13. Regarding the exhibits, Mr. Gentry argued he was prejudiced by not receiving the exhibits prior to the hearing. The Respondent did not dispute the claim she failed to comply with the evidence-exchange rule. The ALJ took both objections under advisement.

14. Here, the Petitioners elected to opt out of the Board’s small claims process, thus the Board’s procedural rules require each party to give all other parties: (1) a list of the witnesses and exhibits it intends to offer at the Board’s hearing at least 15 business days before that hearing, and (2) copies of documentary evidence at least five business days before the hearing. 52 IAC 2-7-1(b)(1) and (2). The Board may exclude evidence based on a failure to comply with those deadlines. 52 IAC 2-7-2(f).
15. The Respondent did not dispute the claim regarding her failure to comply with the pre-hearing evidence exchange requirements. Therefore, the Petitioners’ evidentiary objection is sustained. The Respondent’s exhibits are excluded from the record. The Board notes, however, the exclusion of these exhibits has no effect on the final determination.
16. Mr. Gentry also objected to the testimony of Mr. Pruett with regard to “the number of appeals filed and the results of the appeals for the other taxpayers.” In response, Mr. Pruett responded that he was attempting to show how “we got to where we are today.” Mr. Gentry failed to point to any requirement for a party to disclose its anticipated testimony prior to a hearing. While 52 IAC 2-7-1(b)(2) requires that a party provide a *list of witnesses* at least 15 days before a hearing, Mr. Gentry did not specifically object to Mr. Pruett’s testimony for this reason. Additionally, it should not come as a surprise that Mr. Pruett, the Township Assessor, would testify in defense of his own assessment. As such, the Board overrules the Petitioners’ objection to Mr. Pruett’s testimony.

PETITIONERS’ CONTENTIONS

17. The subject property’s assessment is too high. Here, the Respondent has the burden of proof to support the current assessment. The Respondent’s evidence should not be considered as she failed to comply with the evidence-exchange requirements. Even if the Board were to consider the Respondent’s evidence, it is “insufficient” to prove that the current assessment is correct. *Gentry argument*.

RESPONDENT'S CONTENTIONS

18. The subject property is correctly assessed. The increase in the assessment is due to a change in the most recent Land Order. Accordingly, land values increased from \$152 per front foot in 2011 to \$599 per front foot in 2012. The Respondent utilized the abstraction method to arrive at land values for the subject property's neighborhood. *Pruett argument; Resp't Ex. 1, 2.*
19. In addition, ratio studies were performed in Vigo County for each neighborhood. There was a significant increase in value between 2011 and 2012. As such, the assessments increased, but "no one was singled out or treated unfairly." *Pruett testimony; Resp't Ex. 3, 4.*

BURDEN OF PROOF

20. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). The burden-shifting statute as amended by P.L. 97-2014 creates two exceptions to that rule.
21. First, Ind. Code § 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior year." Ind. Code § 6-1.1-15-17.2(a). "Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or the Indiana tax court." Ind. Code § 6-1.1-15-17.2(b).
22. Second, Ind. Code § 6-1.1-15-17.2(d) "applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15." Under those circumstances, "if the

gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d). This change was effective March 25, 2014, and has application to all appeals pending before the Board.

23. Here, the parties agree the assessed value of the property increased by more than 5% from 2011 to 2012. The total assessment increased from \$209,900 in 2011 to \$231,300 in 2012. Thus, according to the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 the Respondent has the burden to prove the 2012 assessment is correct.

ANALYSIS

24. Real property is assessed based on its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales-comparison, and the income approach are three generally accepted techniques to calculate market value-in-use. *Id.* Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs, sales information regarding the subject property or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.
25. Regardless of the method used, a party must explain how its evidence relates to the relevant valuation date. *See O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Ass’r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For a 2012 assessment, the valuation date was March 1, 2012. *See* Ind. Code § 6-1.1-4-4.5(f).
26. Here, as explained above, the Respondent’s evidence was excluded from the record because the Respondent failed to comply with the Board’s procedural rules. As such, the

Respondent failed to make a prima facie case to support the current assessment.

However, for the following reasons, even if the Board had considered the Respondent's evidence, the Respondent still failed to make a prima facie case.

27. The Respondent attempted to prove the property was correctly assessed by pointing to a Land Order and explaining the increase was the result of a recent ratio study. As for the ratio study, the Respondent failed to offer any support for the notion that a ratio study may be used to prove that an individual property's assessment reflects its market value-in-use. Indeed, the International Association of Assessing Officials Standard on Ratio Studies, which 50 IAC 27-1-44 incorporated by reference, says otherwise:

Assessors, appeal boards, taxpayers, and taxing authorities can use ratio studies to evaluate the fairness of funding distributions, the merits of class action claims, or the degree of discrimination. . . . **However, the ratio study statistics cannot be used to judge the level of appraisal of an *individual* parcel.** Such statistics can be used to adjust assessed values on appealed properties to a common level.

INTERNATIONAL ASSOCIATION OF ASSESSING OFFICIALS STANDARD ON RATIO STUDIES, Version 17.03 Part 2.3 (Approved by IAAO Executive Board 07/21/2007) (bold added, italics in original).

28. The Respondent's burden is not merely to explain why the property's assessment increased. Instead, the Respondent must offer probative evidence proving the subject property's market value-in-use. *See* Ind. Code § 6-1.1-15-17.2.
29. For this reason, the Respondent's testimony regarding an increase in front foot values in accordance with the Land Order also lacks probative value. While it may help explain the methodology of computing the assessment, and even help explain why the assessment increased, it does nothing to prove the property's market value-in-use.

30. Consequently, even if the Board considered the Respondent's exhibits, she failed to make a prima facie case that the 2012 assessment is correct. Therefore, the Petitioners are entitled to have their assessment returned to its 2011 level of \$209,900. This ends the Board's inquiry because the Petitioners only requested the assessment be reduced to its 2011 level.

SUMMARY OF FINAL DETERMINATION

31. The Respondent had the burden of proving the 2012 assessment was correct, but failed to make a prima facie case. The assessment must be reduced to the previous year's amount.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days of the date of this notice.

The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.